CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1024

CHARLES T. RULE,

Petitioner,

vs.

HATTIE SEARS, EDWIN E. WEBER, MINNIE LOUISE MATTOCKS, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA AND BRIEF IN SUPPORT THEREOF.

KENNETH E. GRANT,
Counsel for Petitioner.

FRED N. ARNOLDY,
GEORGE T. WARREN,
HENRY H. DRAEGER,
Of Counsel.

INDEX

Subject Index.

	Page
Petition for a writ of certiorari	1
Summary statement of the matter involved	2
Statement disclosing basis of jurisdiction	7
The questions presented	8
The reasons relied on for allowance of the writ	9
Brief in support of petition	13
Opinions below	13
Jurisdiction	14
Statement of the case	14
Specification of errors	14
Summary of the argument	15
Argument	16

Table of Cases Cited.

American Ry. Exp. Co. v. *Kentucky*, 273 U. S. 269	10, 30
Atlantic Brewing Co. v. *Grocery Co.*, 79 F. (2d) 45	24
Barbier v. *Connolly*, 113 U. S. 28	28
Brinkerhoff-Faris Trust & Savings Co. v. *Hill*, 281 U. S. 673	8, 9, 22
Case v. *Los Angeles Lumber Products Co.*, 308 U. S. 106	12
Consolidated Rock Products Co. v. *du Bois*, 312 U. S. 510	27
Cook v. *Cook*, 17 Cal. (2d) 639	16
Duffley v. *McCaskey*, 345 Mo. 550	18
Ernst v. *Searle*, 218 Cal. 233	10, 17, 18
Flammer v. *Morelli*, 100 N. J. Law Rep. 314	19
Gibson Properties Co. v. *City of Oakland*, 12 Cal. (2d) 291	10, 18
Great Northern Ry. Co. v. *Sunburst Oil & Ref. Co.*, 287 U. S. 358	7, 8
Hurtado v. *California*, 110 U. S. 516	11, 28
Lambersen v. *Bashore*, 178 Cal. 321	18
Louisville Joint Stock Bank v. *Radford*, 174 U. S. 674	27

Page

Lutcher & Moore Lumber Co. v. *Knight*, 217 U. S. 257 ..... 9, 17, 20
Missouri, ex rel. Missouri Ins. Co. v. *Gehner*, 281 U. S. 313 8
National Surety Co. v. *Coriell*, 289 U. S. 426 27
Northern Pacific Ry. Co. v. *Boyd*, 228 U. S. 482 12
Ochoa v. *Hernandez y Morales*, 230 U. S. 139 ..... 12, 28
Osgoody v. *Talmadge*, 45 F. (2d) 696 19
Papinau v. *Security-First National Bank*, 6 Cal. (2d) 668 18
Powell v. *Alabama*, 287 U. S. 45 31
Railroad Retirement Board v. *Alton Railroad Co.*, 295 U. S. 330 ..... 12, 27
Root v. *Rule*, 348 Ill. 370 19
Rule v. *Sears*, 45 Cal. App. (2d) 374, 114 Pac. (2d) 57, 65 A. C. A. 821, 151 Pac. (2d) 293, 27 A. C. 131, 163 Pac. (2d) 443 1
Swallo v. *Tungsten Products Co.*, 205 Cal. 207 28
620 Church St. Bldg. Corp., In re, 299 U. S. 24 12
Truax v. *Corrigan*, 257 U. S. 312 ..... 10, 22, 30
United States Fidelity & Guaranty Co. v. *State*, 169 Okla 59 18
Virginia v. *Mullens*, 271 U. S. 220 ..... 10, 17, 20

STATUTES CITED

American Jurisprudence, Volume 3, pp. 35 et seq. ... 10, 18
California Jurisprudence, Ten Year Supp., Vol. 1, pp. 312, 313 18
California Jurisprudence, Volume 2, p. 237, et seq. .. 18
Constitution of the United States, 14th Amendment, 8, 14, 15
Corpus Juris, Volume 4, pp. 465, et seq 10, 18
Judicial Code, Section 237b, as amended by the Act of February 13, 1925 (43 Stat. 937) 7

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 1024

CHARLES T. RULE,

Petitioner,

vs.

HATTIE SEARS, EDWIN E. WEBER, MINNIE LOUISE MATTOCKS, MAMIE CASE, DOROTHY REUTER, VERNA HARVEY AND MINNIE B. COTTON,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Charles T. Rule respectfully petitions, by his counsel, Kenneth E. Grant, for a writ of certiorari to review a decision of the Supreme Court of the State of California, 27 A. C. 131,[1] and 163 Pac. (2d) 443,[2] rendered November 1, 1945, which affirmed a judgment impressing a trust upon

[1] Advance California Opinions.
[2] Advance Pacific Opinions.

property distributed to petitioner as sole distributee of the estate of Sarah E. Weber, deceased, and awarding money judgments against him.

A

Summary Statement of the Matter Involved

Sarah E. Weber died at Los Angeles January 21, 1936, leaving neither issue, spouse, or parent surviving her (R. Vol. 9: 156). She left an estate appraised at $261,734.89 (R. 167). Petitioner, the youngest of her three brothers (R. 165), was named as sole beneficiary [3] under her last will and testament (R. 162).

The will was duly admitted to probate and on March 15, 1937, the Superior Court at Los Angeles, sitting in probate, entered its decree construing the will and distributing the entire estate to petitioner in his individual right (R. 163).

Some eighteen months after the decree of the probate court had become final the respondents other than Minnie B. Cotton commenced action against petitioner collaterally attacking the final decree of distribution (R. 144-173).

---

[3] Various items of personal property were bequeathed to petitioner by Article Four of the will, but the bulk of the estate was devised and bequeathed to him as residuary legatee and devisee under Article Five (R. 161), reading as follows:

> "All the rest, residue and remainder of my estate, of whatever kind and character, and wheresoever situated at the time of my decease, I give, devise and bequeath as follows, to-wit:
>
> "(a) To my brother, Charles T. Rule, of Los Angeles, California, the whole thereof; and in the event he should fail to survive distribution to him, then to my heirs in accordance with the laws of succession of the State of California.
>
> "(b) The reason of making my brother, Charles T. Rule, aforesaid, the sole beneficiary of my estate, is that I am confident, and place my trust in him to the extent, that he will distribute my estate in accordance with my wishes he and I have often discussed."

They sued as statutory heirs of Mrs. Weber by virtue of their blood relationship to her predeceased husband (R. 144). They alleged:

> (1) that the final decree of distribution was erroneous in that (a) Article Five of the will attempted to devise and bequeath the residue in trust; (b) that said attempted devise and bequest failed; (c) that the residue became and was intestate property; and (d) should have been distributed to the heirs according to the laws of succession (R. 148);
>
> (2) that entry of the decree of distribution was induced by extrinsic fraud of petitioner (a) in failing to give proper notice of the probate proceedings (R. 150-151) and (b) in representing to the probate court that he was sole beneficiary under the will when he knew from the terms of the will that the residue of the estate was intestate property (R. 149-153).

Petitioner's demurrer to the first amended complaint was sustained without leave to amend and judgment of dismissal was entered against said respondents (R. 260). They tendered their second amended complaint (R. 172) and appealed from the judgment of dismissal (R. 260).

The District Court of Appeal, Third Appellate District, reversed. It ruled that while a close question was presented as to whether the allegations of the second amended complaint were sufficient to constitute extrinsic fraud, the probate court had erred in its construction of the will and its consequent distribution of the estate, and that respondents should be allowed reasonable time to amend (R. 260).

No amendment of the allegations of extrinsic fraud was made, however, and trial on the merits proceeded on the

second amended complaint as amended in other respects (R. 198-200, 210, 211). Before trial respondent Minnie B. Cotton, a niece of Mrs. Weber by a predeceased sister, who had been joined as a defendant, filed her cross-complaint against petitioner which in essence followed the allegations of the other respondents (R. 183-197).

On completion of trial the Superior Court, following the allegations of paragraph VII of the complaint (R. 148) and paragraph VI of the cross-complaint (R. 184-185), concluded as a matter of law:

> (1) that the probate court's decree of distribution was erroneous in distributing the residue to petitioner in that (a) Article Five of the will attempted to devise and bequeath the residue in trust; (b) that said attempted devise and bequest failed; (c) that said residue became and was intestate property; and (d) should have been distributed to the heirs according to the laws of succession (R. 235); and found in its findings of fact—
>
> (2) that the decree of distribution was induced by extrinsic fraud of petitioner (R. 219-226).

Judgment was entered impressing a trust upon all the real and personal property constituting the residue of the estate in the possession of petitioner—for respondent Cotton to the extent of a one-eighth interest, for respondent Sears to the extent of a one-fourth interest, and for the other respondents to the extent of a one-twentieth interest each (R. 243). Money judgments were also awarded—$14,641.26 to respondent Cotton, to respondent Sears, $38,282.50, and $7,856.50 to each of the other respondents (R. 248, 249).

Petitioner appealed from the judgment (R. 259), charging, among other things, that the trial court's findings

of extrinsic fraud and error in the probate decree were not supported by the evidence (R. 303). Disposition of the appeal was referred to the District Court of Appeal, Second Appellate District, which on August 28, 1944, reversed the judgment against petitioner (R. 271-280). It ruled that any cause of action which respondent Cotton might have had was barred by the statute of limitations (R. 276-280), and that the other respondents had by settlement agreements entered into with Mrs. Weber in her lifetime and following the death of her husband precluded themselves from asserting any interest in her estate as blood relatives of her predeceased husband (R. 73-77). For these reasons the District Court of Appeal held it was unnecessary to decide the other issues presented by petitioner's appeal.

Respondents sought hearing of the cause in the Supreme Court of California, which was granted on October 26, 1944 (R. 317). On November 1, 1945, the Supreme Court handed down its decision here complained of, by which it reversed the decision of the District Court of Appeal and affirmed the judgment of the trial court (R. 296-313).

The Supreme Court declared it unnecessary to pass upon the questions raised by petitioner's appeal as to the sufficiency of the evidence to support the trial court's findings that (1) the probate court had erred in construing the will and in distributing the estate; and (2) that entry of such decree was induced through extrinsic fraud of petitioner (R. 303). Thus it read out of the case the theory and cause of action which had theretofore been the basis of the litigation and of the judgment of the trial court.

The Supreme Court affirmed the judgment on the theory (1) that petitioner and his sister had in her lifetime, by an agreement collateral to her will, agreed that he should

take the residue of her estate in trust for beneficiaries agreed upon; (2) that the trial court had made no findings as to the terms, purposes and beneficiaries of the agreement and it was impossible, therefore, to enforce a trust in favor of the intended beneficiaries; (3) that the court was not concerned on the appeal with the rights of such intended beneficiaries, and that while respondents did not claim to be intended beneficiaries under any collateral agreement between petitioner and Mrs. Weber, the impressing of a trust in their favor, as heirs-at-law of Mrs. Weber, was proper to prevent unjust enrichment of petitioner (R. 302, 303).

Petitioner sought rehearing of the cause in the California Supreme Court (R. 317). As grounds for rehearing he asserted that the decision deprived him of his property without due process of law and denied him the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, in that:

> (1) the judgment was affirmed upon the theory of a wholly new and substituted cause of action never presented or relied on in the trial court or on appeal, which necessarily involved claims against petitioner and his property of which no reasonable notice was given him, as to which no judicial inquiry was made in the trial court, and against which he had no reasonable and proper opportunity to defend; and
>
> (2) that the action of the Supreme Court arbitrarily deprived him of his vested rights under the final decree of distribution of the probate court (R. 281-284).

The petition for rehearing was denied.

B

Statement Disclosing Basis of Jurisdiction

(1) Jurisdiction is invoked under Section 237B of the Judicial Code, as amended by Act of February 13, 1925 (43 Stat. 937).

(2) The judgment of the Supreme Court of California was entered November 1, 1945 (R. 296, 317). Petition for rehearing, timely filed, was denied November 29, 1945 (R. 318).

Time for filing petition for certiorari herein was duly extended by this Court to March 30, 1946 (R. 325).

(3) The case outlined in the Summary Statement presented no Federal question until rendition of the decision of the Supreme Court of California. The grounds of that decision "supplied a new and unexpected basis for a claim" by the petitioner "of the denial of a Federal right".[4] By his petition for rehearing in that court, that being the first opportunity presented, petitioner charged that the decision deprived him of his property without due process of law and denied him the equal protection of the laws contrary to the Fourteenth Amendment of the United States Constitution, and assigned such charge as a ground for rehearing (R. 281-284).

The Supreme Court of California rejected the contention and denied rehearing without opinion (R. 317-318).

The case presents a substantial question relating to judicial disregard of the guaranties of the Fourteenth Amendment. Petitioner, and his undersigned counsel, believe this petition to be well grounded, and the same is not presented for the purpose of delay.

---

[4] *Great Northern Ry. Co.* v. *Sunburst Oil & Ref. Co.*, 287 U. S. 358, *367*.

(4) The following cases are believed to sustain the jurisdiction of this Court under the circumstances:

Great Northern Ry. Co. v. *Sunbrust Oil & Ref. Co.*, 287 U. S. 358;

Brinkerhoff-Faries Trust & Savings Co. v. *Hill*, 281 U. S. 673;

Missouri ex rel. Missouri Ins. Co. v. *Gehner*, 281 U. S. 313.

C

The Questions Presented

Two questions are presented:

(1) Is not petitioner deprived of his property without due process of law and denied the equal protection of the laws in violation of the Fourteenth Amendment to the United States Constitution, by the action of the California Supreme Court in affirming the judgment of the trial court on the theory of a cause of action evolved by the Supreme Court itself, which was not presented or relied on in the trial court or on appeal, and which has never been the subject of judicial inquiry or determination?

(2) Even assuming the right of the California Supreme Court to discard the theory and cause of action presented and relied on in the trial court and on appeal, is not the petitioner arbitrarily and without due process of law deprived of his vested rights under the final decree of distribution of the probate court, in violation of the Fourteenth Amendment to the United States Constitution, when the property distributed to him thereby is taken from him without judicial inquiry into or determination of the validity, or the terms, purposes or beneficiaries of the purported trust under an agreement collateral to the will and is given to respondents who do not claim to be beneficiaries under such purported agreement or trust?

D

The Reasons Relied on For Allowance of the Writ

Review on certiorari is asked because the stated questions have been decided by the California Supreme Court in a manner not in accord with applicable decisions of this Court.

(1) The action of the California court substantially denied petitioner his day in court and deprived him of his property without affording him an opportunity to be heard. Far more is involved than mere judicial error in the exercise of appellate jurisdiction.

For the purposes of its decision the California court discarded all consideration of (1) alleged error of the probate court in construing the will and distributing the estate of Mrs. Weber, and (2) relief from the final decree of distribution claimed to have been induced by extrinsic fraud. It thus discarded the theory and cause of action which constituted the basis and foundation of the judgment of the trial court. A new and different basis was substituted—namely, a cause of action predicated upon an express trust created by an agreement collateral to the will—of which no notice was given petitioner by appropriate pleading, against which he had no opportunity to be heard, and concerning which there was no judicial inquiry or determination in the trial court.

In *Brinkerhoff-Faries Trust & Savings Co.* v. *Hill*, 281 U. S. 673, 681, 682, this Court declared that while it is for the state courts to determine the adjective as well as the substantive law of the state, they must, in so doing, accord the parties due process of law; that due process of law, in its primary sense, requires that the litigant be given an opportunity to present his case and be heard in its support. In *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 257, 267, this Court held that the inevitable result of affirmance of a

judgment by an appellate court on a ground or theory other than that relied upon in the court below was substantially to deny to a litigant his day in court and, in other words, was equivalent to condemning him without affording him an opportunity to be heard.

The California Supreme Court, in *Ernst* v. *Searle*, 218 Cal. 233, and more recently in *Gibson Properties Co.* v. *City of Oakland*, 12 Cal. (2d) 291, declared the rule to be well settled that the theory upon which a case is tried must be adhered to on appeal. The rule has been uniformly recognized and applied by the courts of other jurisdictions.[5] This Court has consistently recognized and applied the rule. In *Virginia* v. *Mullens*, 271 U. S. 220, 227, 228, it declared that after bringing and trying the case on one theory the plaintiff cannot be permitted on review to change to another which the defendant was not required to meet below. The basic reason for the rule rests upon the fundamental right of the litigant to have his day in court, as recognized by this Court in *Lutcher & Moore Lumber Co.* v. *Knight, supra.* To refuse to apply this universally recognized rule is not only to deny to the litigant due process of law in its primary sense, but also the equal protection of the laws.[6] More extended discussion will be found in the appended brief.

(2) Even assuming the right of the California court to discard the theory and cause of action presented and relied on in the court below and on appeal, still its decision arbitrarily and without due process of law deprives petitioner of his vested rights under the final decree of distribution of the probate court.

In *American Ry. Exp. Co.* v. *Kentucky*, 273 U. S. 269, 273, this Court declared that it cannot interfere with a judg-

---

[5] 3 Am. Jur., pp. 35 et seq.; 4 C. J. S. Appeal and Error, pp. 465 et seq., and cases there cited.

[6] *Truax* v. *Corrigan*, 257 U. S. 312.

ment of a state court unless the judgment amounts to mere arbitrary or capricious exercise of power, or is in conflict with the fundamental principles established in our systems of jurisprudence for the protection of private rights. That the converse of the proposition is equally true was recognized by this Court in *Truax* v. *Corrigan, supra*, and *Hurtado* v. *California*, 110 U. S. 516.

The California court in introducing a new and different theory and ruling out of consideration the two basic elements of the trial court's decision found itself confronted with an anomalous situation, as disclosed by the following: The Court declared (1) that "respondents do not claim to be beneficiaries of the agreement"; (2) that "the trial court made no finding on the exact terms, purposes and beneficiaries of the agreement" (as it was not called upon to do by any issue presented to it); and (3) that therefore "it is impossible to enforce a trust in favor of the undisclosed * * * beneficiaries" (R. 303). In this situation, assuming that the subject of a trust created by a collateral agreement was properly before the court for consideration and determination, orderly and established procedure and a due regard for private rights called for a judicial determination of the validity of the purported collateral agreement, and of its terms, purposes and beneficiaries, before proceeding further upon the substituted theory and cause of action.

The California court, however, declared that it was not concerned with the rights of the beneficaries of such purported agreement; and without finding any invalidity in the purported collateral agreement, and upon the theory of preventing unjust enrichment of petitioner decreed that the property be given to all heirs, including respondents who admittedly "do not claim to be beneficiaries" under the purported agreement (R. 303).

In *Ochoa* v. *Hernandez y Morales*, 230 U. S. 139, 161, this Court declared that all authorities agree that the due process of law guarantee inhibits the taking of one man's property and giving it to another contrary to the settled usages and modes of procedure, and without notice or an opportunity for a hearing.[7]

Further discussion of the matter will be found in the appended brief.

Wherefore, petitioner prays that a writ of certiorari issue under the seal of this Court, directed to the Supreme Court of the State of California, to the end that this case may be reviewed and determined by this Court as provided by the statutes of the United States; and that the judgment herein of said Supreme Court of California be reversed by this Court; and for such other and further relief as to the Court may seem proper.

Dated: January 30, 1946.

CHARLES T. RULE,
Petitioner,
By KENNETH E. GRANT,
Counsel for Petitioner.

FRED N. ARNOLDY,
GEORGE T. WARREN,
HENRY H. DRAEGER,
Of Counsel.

---

[7] Cf. *Railroad Retirement Board et al.* v. *Alton Railroad Co., et al.*, 295 U. S. 330, 357; cf. also *In re 620 Church Street Bldg. Corp.*, 299 U. S. 24; *Northern Pacific Ry. Co.* v. *Boyd*, 228 U. S. 482; and *Case* v. *Los Angeles Lumber Products Co.*, 308 U. S. 106, the basis of which is that due process will not permit the property rights of creditors to be invaded to allow stockholders to participate in corporate reorganizations.